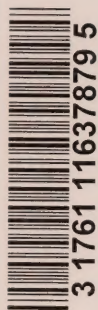




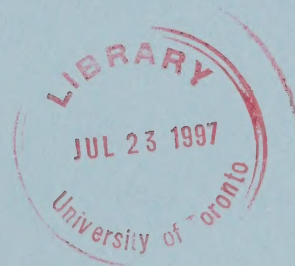
National Energy Board



Reasons for Decision

**Amoco Canada Petroleum
Company Ltd. on behalf of
Dome Kerrobert Pipeline Ltd.
and PanCanadian Kerrobert
Pipeline Ltd.**

OH-1-97



July 1997

Facilities

National Energy Board

Reasons for Decision

In the Matter of

**Amoco Canada Petroleum Company
Ltd. on behalf of Dome Kerrobert
Pipeline Ltd. and PanCanadian
Kerrobert Pipeline Ltd.**

Application dated 9 April 1997 for the Empress
to Kerrobert Pipeline Expansion

OH-1-97

July 1997

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represented by the National Energy Board

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Abbreviations and Definitions

Act	<i>National Energy Board Act</i>
Amoco, Applicant, Company	Amoco Canada Petroleum Company Ltd.
b/d	barrels per day
Board, NEB	National Energy Board
CEAA	<i>Canadian Environmental Assessment Act</i>
Certificate	Certificate of Public Convenience and Necessity
CSA	Canadian Standards Association
CSA Z662	CSA standard Z662-96, Oil and Gas Pipeline Systems
EGLJV	Empress Gas Liquids Joint Venture
ERP	Emergency Response Plan
ESA	Environmentally Significant Area
HP	horsepower
IBP	International Biological Programme
IPL	Interprovincial Pipe Line Inc.
Kerrobert pipeline	Empress to Kerrobert pipeline system
km	kilometre(s)
KP	kilometre post
kPa	kilopascal
LPL	Lakehead Pipe Line Co.
m	metre
m ³	cubic metre(s)
m ³ /d	cubic metre(s) per day
mm	millimetre(s)

MMcf/d	millions of cubic feet per day
NGL	natural gas liquids
Norcen	Norcen Energy Resources Limited
OD	outside diameter
PanCanadian	PanCanadian Petroleum Limited
Petro-Canada	Petro-Canada Oil and Gas
pipeline owners	Dome Kerrobert Pipeline Ltd. and PanCanadian Kerrobert Pipeline Ltd.
psi	pounds per square inch
straddle plant	A natural gas processing plant, located on a main gas transmission system, which extracts NGL from the gas stream.

Recital and Appearances

IN THE MATTER OF the *National Energy Board Act* and the regulations made thereunder;

IN THE MATTER OF an application dated 9 April 1997, by Amoco Canada Petroleum Company Ltd., on behalf of Dome Kerrobert Pipeline Ltd. and PanCanadian Kerrobert Pipeline Ltd., filed pursuant to section 52 of the Act for the construction of a natural gas liquids pipeline and related facilities; and

IN THE MATTER OF the National Energy Board Hearing Order OH-1-97.


HEARD at Calgary, Alberta, 16 June 1997.

BEFORE:

J.A. Snider	Presiding Member
R. Priddle	Member
R.D. Revel	Member

APPEARANCES:

D.A. Holgate	Amoco Canada Petroleum Company Ltd.
A.G. Menzies	Alberta Natural Gas Company Ltd
W. Muscoby	Imperial Oil Limited
G.M. Nettleton	Interprovincial Pipe Line Inc.
R.F. Smith	Norcen Energy Resources Limited
P. McCunn-Miller	PanCanadian Petroleum Limited
S.R. Miller	Petro-Canada Oil and Gas
M.A. Fowke	Board Counsel



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Chapter 1

Introduction

1.1 Background

On 9 April 1997, Amoco Canada Petroleum Company Ltd. ("Amoco", "Applicant" or "Company") on behalf of Dome Kerrobert Pipeline Ltd. and PanCanadian Kerrobert Pipeline Ltd. ("pipeline owners") applied, pursuant to section 52 of the *National Energy Board Act*¹ ("the Act"), for a Certificate of Public Convenience and Necessity ("Certificate") to expand its Empress to Kerrobert pipeline system ("Kerrobert pipeline") and make modifications to the Laporte pump station.

The applied-for facilities consist of about 155 km (96 miles) of 273.1 mm (10 inch) outside diameter ("OD") pipeline and pump station modifications to transport natural gas liquids ("NGL") from the NGL extraction plants ("straddle plants") at Empress, Alberta to the Interprovincial Pipe Line Inc. ("IPL") pump station, located near Kerrobert, Saskatchewan. The proposed pipeline will twin Amoco's existing 219.1 mm (8 inch) OD NGL pipeline between Empress and Kerrobert. Figure 1-1 illustrates the Kerrobert pipeline and proposed expansion.

The proposed expansion will increase throughput capability of the Kerrobert pipeline by 7 937 m³/d (49,920 b/d) to 18 577 m³/d (116,850 b/d). The applied-for facilities are estimated to cost \$23.05 million.

The National Energy Board ("the Board") issued Hearing Order and Directions on Procedure OH-1-97 on 1 May 1997 which set Amoco's application down for an oral public hearing. The hearing was held in Calgary on 16 June 1997.

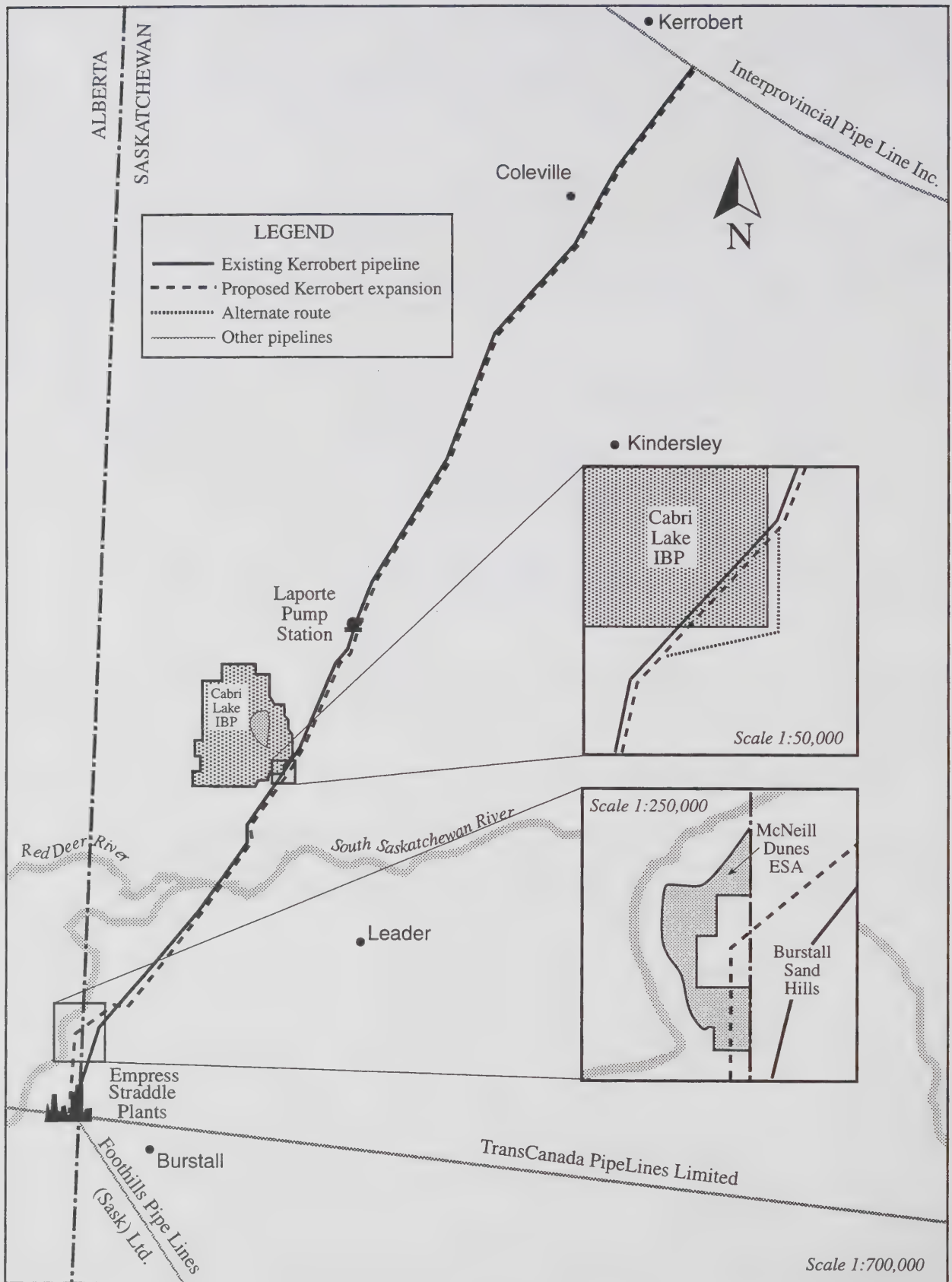
1.2 Environmental Screening

The Board conducted an environmental screening of the applied-for facilities in compliance with section 18 of the *Canadian Environmental Assessment Act*² ("CEAA"). The Board ensured that there was no duplication in the requirements under the CEAA and the Board's regulatory process.

¹ R.S.C. 1985, c.N-7.

² S.C. 1992, c.37.

Figure 1-1
Kerrobert Pipeline - Proposed Expansion



Chapter 2

Supply, Transportation and Markets

2.1 Supply

The NGL supply for the Kerrobert pipeline comes from the straddle plants at Empress, Alberta. All the NGL extracted at the Amoco, the Empress Gas Liquids Joint Venture ("EGLJV") and the PanCanadian Petroleum Limited ("PanCanadian") straddle plants, plus a portion of the liquids produced at the Petro-Canada Oil and Gas ("Petro-Canada") straddle plant, flow through the Kerrobert pipeline. Amoco submitted that its existing line will not be capable of handling projected throughput which could be as high as 11 600 m³/d (72,962 b/d) by November 1997.

The forecasted increase in NGL production is based on increased natural gas throughput at Empress as a result of an 8 10⁶m³/d (282 MMcf/d) expansion of TransCanada PipeLines Limited's system (to be completed in 1997), as well as an expansion of the Northern Border Pipeline Company system supplied by Foothills Pipe Lines (Sask.) Ltd. Natural gas throughput at Empress is expected to continue to increase through 1999, and expansions are planned at the Empress extraction facilities to take advantage of those increases.

Amoco stated that its forecast of increased NGL production was based on:

- Elimination of a cold box problem at Amoco's Empress straddle plant and plans to debottleneck the facility prior to November 1999 are expected to increase NGL recovery from 7 374 10³m³/d (46,380 b/d) to 9 200 10³m³/d (57,870 b/d) by November 1999;
- A proposed expansion of the EGLJV straddle plant is expected to increase NGL recovery at that facility from 1 012 10³m³/d (6,365 b/d) to 1 740 10³m³/d (10,940 b/d) by November 1999;
- Amoco and Alberta Natural Gas Company Ltd. plan to file an application with the Alberta Energy and Utilities Board in July 1997 for a proposed new Empress straddle plant to be completed by September 1999 with NGL recovery of 1 740 10³m³/d (10,940 b/d); and
- NGL available from the Petro-Canada straddle plant is expected to increase from the current level of 518 10³m³/d (3,260 b/d) to 720 10³m³/d (4,530 b/d) by November 1997.

Amoco stated that the Kerrobert pipeline had been operating at capacity from November 1996 through to February 1997. Throughput over that period averaged 10 347 m³/d (65,081 b/d) or 98 percent of the current pipeline capability of 10 640 m³/d (66,924 b/d). Furthermore, Amoco stated that an additional 200 m³/d (1,260 b/d) could have been transported had capacity been available.

With the changes to the Empress extraction facilities cited above and assuming that the natural gas export pipelines are operating at capacity, Amoco forecast that the peak winter NGL volumes delivered to the Kerrobert pipeline would be 12 460 m³/d (78,371 b/d) in November 1997. Total NGL

volumes delivered to the Kerrobert pipeline are projected to increase to 15 520 m³/d (97,618 b/d) by November 1999.

2.2 Transportation

Amoco stated that the NGL from the Kerrobert pipeline will travel primarily through the IPL and Lakehead Pipe Line Co. ("LPL") systems to reach the market. Truck and rail transportation will also be utilized for some of the eastern markets accessible from those systems.

The adequacy of the IPL facility to receive NGL volumes from the Kerrobert pipeline was discussed during the hearing. Amoco stated that eventually the increased throughput on the Kerrobert pipeline will require increased capacity on IPL and that IPL was currently undertaking an expansion of its system.

Amoco indicated that it will not be filling the Kerrobert pipeline to capacity immediately; rather, the proposed capacity is in anticipation of future expansions of the take-away capacity of the Empress straddle plants. During the normal course of events, as those volumes are realized, Amoco expects that it would carry on discussions with IPL to determine the level of additional downstream capacity that is needed. Amoco also noted that, if there were an oversubscription of capacity and apportionment came into play, it would work within the apportionment rules as set out in IPL's tariff.

Amoco argued that the design of the proposed expansion provides both future capacity, as would be done in any prudent design, as well as cost savings. Amoco stated that it is not a question of initially matching capacity of the upstream pipeline with the capacity of the downstream pipeline.

2.3 Markets

NGL will be able to reach all markets accessible from the IPL/LPL systems. These include markets accessed from fractionation facilities at Superior, Rapid River, Marysville, and Sarnia, as well as sales in Ontario and PADD³ I and PADD II in the United States. Amoco stated that incremental NGL shipments will be small relative to the size of demand in PADDs I and II, and could easily be absorbed by those markets. Amoco stated that the Kerrobert shippers have expressed confidence that they can successfully compete with alternate supply sources to market their NGL in Ontario and PADD I and PADD II markets.

Views of the Board

The Board is satisfied that there is and will be an adequate supply of natural gas liquids to justify the applied-for facilities. The likelihood of increased throughput at the Empress straddle plants is high, given the anticipated growth in demand for natural gas in both domestic and export markets east of Alberta.

³ PADD refers to the Petroleum Administration for Defense Districts. These are geographic aggregations of the 50 States and District of Columbia into five districts defined by the Petroleum Administration for Defense in 1950. These districts were originally defined during World War II for the purposes of administering oil allocation. Geographically, the five districts are East Coast (I), Midwest (II), Gulf Coast (III), Rocky Mountain (IV), and West Coast (V).

The Board is satisfied with Amoco's assurances that IPL has the capacity to handle the incremental volumes from the Kerrobert pipeline in the initial period. Furthermore, the Board agrees with Amoco that it is reasonable to expect that IPL would plan logical increments to the capacity of its system as the future needs of its shippers become known.

The Board notes that there are adequate markets in both Canada and the United States for the incremental NGL to be shipped on the Kerrobert pipeline. The Board supports Amoco's view that these incremental shipments are small relative to the size of anticipated demand and agrees that the shipments could be absorbed easily by those markets.

Chapter 3

Traffic, Toll and Tariff Matters

3.1 Financial Matters and Toll Methodology

The Kerrobert pipeline is a joint venture pipeline owned in equal undivided interests by Dome Kerrobert Pipeline Ltd. and PanCanadian Kerrobert Pipeline Ltd., which are wholly-owned subsidiaries of Amoco and PanCanadian respectively. To date, the pipeline has transported only NGL owned by the parent companies. The \$23.05 million cost of the applied-for facilities will be financed in equal proportions by the pipeline owners.

The pipeline owners have a tariff on file for the transportation of NGL from Empress, Alberta and Coleville, Saskatchewan to the IPL terminal at Kerrobert, Saskatchewan. The tolls are \$0.6911 per cubic metre and \$0.1709 per cubic metre, respectively. Amoco indicated that it expects to file revised tolls as a result of the proposed expansion. It estimates that the tolls will almost double for 1998 to \$1.28 and \$0.31, respectively, and gradually decline thereafter. The tolls will be negotiated between the pipeline owners.

3.2 Form of Regulation

The 100 percent pipeline entity is regulated as a Group 2 company pursuant to the Board's Memorandum of Guidance on the Regulation of Group 2 Companies, dated 6 December 1995. The Board regulates the tolls of Group 2 companies on a complaint basis. Schedule B of the Memorandum of Guidance requires every Group 2 company to include an explanatory note in its tariff which states:

The tolls of the Company are regulated by the National Energy Board on a complaint basis. The Company is required to make copies of tariffs and supporting financial information readily available to interested persons. Persons who cannot resolve traffic, toll and tariff issues with the Company may file a complaint with the Board. In the absence of a complaint, the Board does not normally undertake a detailed examination of the Company's tolls.

Although this paragraph is not included in the current tariff of the pipeline owners which predates the issuance of the revised Memorandum of Guidance, the provision applies to the Kerrobert pipeline.

Paragraph 5(2)(b) of the Board's *Oil Pipeline Uniform Accounting Regulations*⁴ requires every Group 2 company to file audited financial statements each year. On 23 December 1994, the Board issued Order MO-21-94, exempting the pipeline owners from filing financial statements each year so long as the pipeline continued to be used exclusively by its owner-companies. Amoco has agreed to notify the Board when third parties become shippers on the pipeline. This information will assist the Board in determining whether any change to the current financial reporting regime is warranted.

⁴ C.R.C., c. 1058.

3.3 Common Carrier Obligations

In its application, Amoco indicated that, in addition to PanCanadian and itself, there may be other shippers on the pipeline. However, when this was queried, Amoco indicated that no third party had yet requested service.

During the hearing, Norcen Energy Resources Limited ("Norcen") sought information concerning access to the pipeline. After Amoco confirmed its intention to operate the pipeline as a common carrier, Norcen supported the application. Norcen anticipates that it may become a shipper on the pipeline at a later date.

Views of the Board

No concerns relating to traffic, toll and tariff matters for the Kerrobert pipeline were identified as a result of this proceeding. Moreover, the Board anticipates that neither of the pipeline owners will have difficulty in financing its share of the project. Since the Kerrobert pipeline has been used exclusively by its owners, the Board is not concerned that the current tariff does not include the required paragraph describing the complaint basis of regulation. The Board expects that this paragraph will be incorporated into the next revision of the tariff.

In 1994, the Board re-examined financial reporting by Group 2 companies and issued Order MO-21-94 to exempt the pipeline owners from annual financial reporting. The Board will revisit the reporting requirements for the pipeline owners when a third party becomes a shipper on the pipeline.

The Kerrobert pipeline is regulated as a common carrier oil pipeline. As articulated in the MH-4-96⁵ decision, the Board is mindful of the need to ensure that there is open public access to oil pipelines under its jurisdiction. Open public access is something of which the Board must be assured in granting authority to construct and operate any oil pipeline. The Board is confident that Amoco intends to operate the Kerrobert pipeline as a common carrier.

⁵ PanCanadian Petroleum Limited, MH-4-96, Decision dated February 1997, at pp. 13-14.

Chapter 4

Facilities

4.1 Facilities Description

The proposed expansion of the Kerrobert pipeline consists of approximately 155 km (96 miles) of 273.1 mm (10 inch) OD pipe extending from the straddle plants at Empress, Alberta to the IPL pump station near Kerrobert, Saskatchewan. At Kerrobert, NGL is pumped directly into the IPL system or temporarily stored in underground caverns prior to injection. The proposed pipeline will twin Amoco's existing 219.1 mm (8 inch) OD NGL pipeline between Empress and Kerrobert as shown in Figure 1-1.

The proposed pipeline has a design capacity of 10 421 m³/d (65,541 b/d) and a maximum operating pressure of 9 930 kPa (1,440 psi). This will increase the throughput capability of the Kerrobert pipeline to 18 577 m³/d (116,850 b/d). Block valves and check valves will be installed in the same locations as on the existing pipeline. This includes block valves on both sides of the South Saskatchewan River and a check valve on the downstream side. On the upstream side, automated block valves will be installed on the existing and new lines to minimize spillage into the river should a line break occur. To accommodate internal inspection tools, pig launching and receiving facilities will be installed at Empress, Laporte and Kerrobert.

Turbine meters will be installed on the new line at Empress and Kerrobert to balance the flow rates between the two lines and to assist in leak detection. The pipeline system will be controlled by the existing programmable logic controllers at Empress, Laporte and Kerrobert and continuously monitored through a supervisory control and data acquisition system. System flows, pressures, temperatures and pump operations at Empress, Laporte and Kerrobert are available at any of these three locations.

4.2 Laporte Pump Station

The existing pump station at Laporte consists of three 450 HP pumps (P-100, P-200 and P-300) in series and one 800 HP (P-400) pump in parallel with these three. With a new parallel line in service, the pumps at Laporte will not be utilized under normal operating conditions. The P-400 pump will be dismantled, moved to Kerrobert and used for cavern injection. The piping on the other three pumps will be modified to allow P-100 and P-200 to be dedicated to the existing and new lines, respectively, and P-300 will be utilized as a backup for either line. With this design, sections of either line from Empress to Laporte or from Laporte to Kerrobert can be shut down without losing production under most flow rate scenarios.

4.3 South Saskatchewan River Crossing

When the existing pipeline under the South Saskatchewan River was installed in 1971, a "blank" section of pipe was installed in the same trench. Since that time, erosion has reduced the depth of cover on these pipelines to a level that is currently below the minimum CSA Z662 requirement. Amoco will install two new pipelines under the South Saskatchewan River using a directional drilling technique.

To accommodate the new crossings, two boreholes approximately 15 m apart will be drilled in a new 30 m right of way adjacent to the existing crossing location. The drill length will be approximately 700 m, allowing for a minimum 10 m "no drill zone" between the bottom of the river bed and the boreholes. In response to Board Information Requests, Amoco submitted further details on the feasibility of its proposed drilling activities and expressed confidence in a successfully drilled crossing of the South Saskatchewan River.

Once the proposed pipeline is placed in service, the new 219.1 mm OD pipe crossing will be tied into the existing pipeline. The cut pipe section will be cleaned of product, purged with nitrogen and capped in place. Amoco will maintain cathodic protection of both isolated pipe sections in the event of a future application for which they may be suitable.

4.4 Emergency Response Preparedness

The Board's *Onshore Pipeline Regulations*⁶ require pipeline companies to develop emergency procedures for their pipeline systems and to update them regularly, in consultation with the appropriate authorities (e.g., fire departments and other response agencies). In addition, where a company operates a high vapour pressure pipeline, the company must distribute information regarding emergency preparedness and response to the appropriate local agencies and the public residing adjacent to the pipeline.

Amoco has filed with the Board its Emergency Response Plan ("ERP") for the existing pipeline and has committed to updating this plan to include the proposed facilities. Amoco has provided copies of its ERP to the RCMP at Leader, Kindersley and Kerrobert and to the rural municipalities. Further to this, Amoco intends to invite all RCMP and fire departments along the right of way to a one day course in 1997 on how to respond to an NGL release. For the general public, pipeline awareness meetings are held once a year at a minimum of two locations along the right of way. Amoco confirmed during the hearing that emergency response preparedness is discussed at these meetings.

Amoco submitted that it sends letters to the landowners and occupants along the Kerrobert pipeline right of way on an annual basis. The content of these letters deals primarily with the necessary procedures for performing work near the pipeline. However, attached to each letter is a brochure dealing with pipeline safety in general. The brochure includes, among other things, a discussion of the type of product transported, how to recognize a leak and what to do in the event of an emergency.

Amoco confirmed for the Board that these letters and brochures are sent to owners, renters and residents within 0.8 km of the Kerrobert pipeline. However, in its ERP, Amoco defines emergency planning zones in which all people should be evacuated in the event of an emergency. In general, the unsafe zone is a 1 km radius of an NGL release; if the line break occurs in the river valley, the unsafe zone increases to 3 km. Given these evacuation distances, there is the possibility that there may be people living within the defined emergency planning zones of the Kerrobert pipeline system who are not adequately informed of the proper actions to take in the event of a pipeline emergency.

⁶ SOR 89-303.

Views of the Board

The Board is satisfied that the pipeline and associated facilities are appropriate for the purposes of the proposed service and that all design and construction activities will meet the applicable standards and regulatory requirements.

The Board acknowledges the efforts made by Amoco with respect to public communication and emergency response preparedness. However, the Board is concerned that all people living in the defined emergency planning zones of the proposed pipeline may not be prepared for pipeline emergencies.

To address this concern, the Board will include a condition in any Certificate granted which requires Amoco to ensure that all landowners and other residents living in the defined emergency planning zones of the proposed pipeline are adequately informed of the necessary actions to take in the event of a pipeline emergency, prior to placing the applied-for facilities in service.

Chapter 5

Public Consultation, Environmental, Socio-Economic, Land and Right-of-Way Matters

5.1 Public Consultation, Environmental and Socio-Economic Matters

The Board completed an Environmental Screening Report pursuant to the CEAA and the Board's regulatory process. The Board circulated the Screening Report to those federal agencies that had provided specialist advice regarding the proposed project, to other CEAA responsible authorities, to those interested persons that had requested a copy, and to the Applicant.

The Board has considered the Environmental Screening Report and comments received on the report in accordance with Hearing Order OH-1-97. The Board decided that, taking into account the implementation of the proposed mitigative measures, and those set out in the attached conditions, Amoco's proposal is not likely to cause significant adverse environmental effects. This represents a decision pursuant to paragraph 20(1)(a) of the CEAA.

The comments received, and the Board's views, have been attached to the Environmental Screening Report as Appendices I and II of the Report respectively. Copies of the Environmental Screening Report are available upon request from the Board's Library.

5.2 Land and Right-of-Way Matters

5.2.1 Routing

The proposed project is a buried pipeline, approximately 155 km in length, extending from Amoco's Empress straddle plant located in SW 1/4 12-20-1 W4M, in Alberta, to IPL's pump station located in SE 1/4 34-33-22 W3M, in Saskatchewan. The majority of the proposed pipeline route, approximately 135.5 km, will parallel the existing Kerrobert pipeline right of way.

Initial route plans envisaged that the proposed pipeline would, throughout its length, parallel the existing pipeline route from Empress to Kerrobert. The existing pipeline right of way was assessed for historical and current environmental sensitivities utilizing topographic, geologic, land-use, and wildlife habitat maps, and aerial photographs. Field studies were undertaken to assess site specific terrain, vegetation, and soil conditions of the route.

The biophysical criteria utilized by Amoco for pipeline route selection included:

- maximizing use of existing linear disturbances;
- minimizing cutting of steep slopes and potential slumping of side slopes;
- minimizing disturbance to sensitive soil and vegetation areas;
- minimizing tree and shrub removal;
- minimizing disturbance to critical wildlife habitat;
- avoiding poorly drained areas; and
- minimizing the number of watercourse crossings.

Following an assessment of the environmental sensitivities of the existing pipeline corridor and discussions with government agencies and local stakeholders, Amoco determined that mitigation of the adverse environmental impacts associated with disturbing the sand dune terrain of the Burstall Sand Hills would be best accomplished by avoiding this sensitive area.

In response to a request from the Board for further information, Amoco investigated the possibility of a re-route around the southeastern edge of the proposed Cabri Lake International Biological Programme ("IBP") Site. Amoco submitted that the originally proposed route was still preferred. However, a deviation around the site, at a cost of approximately \$120,000, would be undertaken if the Board so directed.

The revised route begins at kilometre post ("KP") 0 at the Amoco straddle plant in Empress, Alberta. From KP 0 to KP 18, Amoco will utilize a new right of way to avoid the Burstall Sand Hills. The initial 6 km north of Amoco's plant will parallel a proposed disposal well pipeline and an existing road. The route will then deflect east at KP 11 to intersect the existing Kerrobert pipeline at KP 18. The revised route will parallel the southeast side of the existing pipeline to KP 53 where it will deflect approximately 1.5 km east around the southeastern edge of the Cabri Lake IBP Site to approximately KP 55. The revised route will then parallel the southeast side of the existing pipeline to IPL's Kerrobert pump station at KP 155. As a result of the aforementioned deviations, approximately 20 km of new right of way, as defined under the CEAA, will be required.

Views of the Board

The Board has considered the information provided by Amoco and is of the view that the re-route of the proposed pipeline around the Cabri Lake IBP Site is preferable and warranted. The Board notes that such a re-route would reduce the amount of native prairie grassland disturbed by the proposed project, that the Cabri Lake IBP Site is still under consideration for designation under provincial legislation, and that the existing 25 year old pipeline right of way through the site has re-established native vegetation similar to the surrounding area. Therefore, the Board is of the view that further disturbance of the area resulting from pipeline construction would be inappropriate at this time. The Board also notes that the re-route is only 0.5 km longer than the original proposal, the cost of the re-route is minimal and the company had agreed to undertake a re-route around the site if the Board so directed.

5.2.2 Land Requirements

In areas where the proposed construction parallels the existing right of way, Amoco has proposed to acquire 10 m of new right of way. Five metres of the existing right of way will be used for temporary workspace. Additional temporary workspace requirements will be needed for the directional drill of the South Saskatchewan River, road and rail crossings, and tie-ins to Amoco's Empress straddle plant and IPL's Kerrobert pump station. For portions of the proposed line that do not parallel the existing line, Amoco has proposed to acquire 15 m of new right of way and has indicated that no temporary workspace will be required.

5.2.3 Access Development

Amoco has indicated that no new permanent access is planned in support of the applied-for facilities. The existing right of way will be utilized for access while temporary access to the south side of the South Saskatchewan River will be required for directional drill activities.

Views of the Board

The Board finds that Amoco's anticipated land requirements for pipeline construction, installation, access, and operation are reasonable and justified.

5.2.4 Right-of-Way Agreements

In response to an Information Request from the Board, Amoco filed a sample Right-of-Way Agreement. In a subsequent Information Request, the Board expressed concern about whether paragraph 5 of the Right-of-Way Agreement meets the requirements of paragraph 86(2)(e) of the Act, specifically with respect to requiring consent of the landowner for any additional use at the time of the proposed additional use.

Paragraph 5 of the Right-of-Way Agreement states:

The Company proposes to install one (1) pipeline in the first trench to be excavated on the right of way. Each time the right of way is trenched thereafter for installation of an additional pipeline or pipelines the Company shall pay to the Owner or his assigns a sum calculated at a rate per hectare to be agreed between the Owner and the Company for that portion of the right of way used for the additional pipeline or pipelines.

Paragraph 86(2)(e) of the Act reads as follows:

(2) A company may not acquire lands for a pipeline under a land acquisition agreement unless the agreement includes provision for

...

(e) restricting the use of the lands to the line of pipe or other facility for which the lands are, by the agreement, specified to be required unless the owner of the lands consents to any proposed additional use at the time of the proposed additional use; ...

Amoco stated in its response to the Information Request that it was of the view that paragraph 5 of the Agreement meets the requirements of the Act. It noted that there must be further agreement between the landowner and the Company with respect to compensation for any additional use. In the Company's view, an agreement as to the level of that compensation necessarily implies that the consent of the landowner for the use of the lands will be required.

In a letter dated 12 June 1997, the Board indicated that it would like to hear this matter addressed in final argument.

Amoco noted the Board's decision in *Intercoastal*⁷ that land acquisition is a matter between the landowner and the company and that the Board does not approve the right-of-way agreement that results from the negotiations. Rather, the Board ensures that the agreement complies with the Act.

In interpreting paragraph 86(2)(e) of the Act, counsel for Amoco placed importance on the requirement that the landowner's consent is required at the time of the proposed additional use. Counsel noted that there is no restriction in the Act on including additional use in a right-of-way agreement, so long as it cannot be unilaterally imposed upon the landowner at the time of the additional use. As well, paragraph (e) does not prescribe any specific form of consent or any specific language that must be included in the agreement.

It was argued that paragraph 5 of the Agreement requires that the landowner agree to compensation for any additional use at the time of the additional use. The landowner could not reasonably be expected to agree to compensation unless he or she also agreed with the additional use. In Amoco's view, there can be no additional use without the landowner's agreement to compensation, which is no different than stating there can be no additional use without consent.

In reaching this conclusion, Amoco asked itself whether it could enforce the Agreement with respect to future use, without consent, and found it could not.

Amoco referred to *Hillside Farms Ltd. v. British Columbia Hydro and Power Authority*⁸. In that case, a landowner argued, unsuccessfully, that the power authority lacked the right under the easement agreement to install higher power transmission lines than those already constructed at the time the contract was signed. Amoco noted that this case is usually cited as authority for the proposition that extrinsic evidence of the intention of the parties is not necessary where the language of an agreement is clear. However, counsel pointed out that this case also raises two other points. First, in *Hillside Farms*, the landowner could not show that some aspect of the agreement in that case was breached without referring to extrinsic evidence. It was argued that this is not the case here, as for Amoco to proceed with an additional use, it must comply with the provisions of paragraph 5 of the Agreement.

Second, the court in *Hillside Farms* noted that the parties could have included language restricting the rights of the utility. Amoco quoted the decision at page 753:

Had this been done, it would subsequently be necessary to reopen and renegotiate the right-of-way agreement and the compensation each time it became desirable to take advantage of technological advances (for example increasing voltage) which exceeded these limitations. Yet clearly inconsistent with this proposition, the compensation finally agreed upon was acknowledged to be a once and for all payment.

Amoco interpreted this to mean that if the utility were to be prevented from a future use to which the landowner did not consent, the parties should have made provision for additional compensation instead of a single lump sum payment. It argued that the converse is also true: if an agreement specifically provides for negotiation and compensation for additional use, it is because the rights granted to the company are restricted to the initial use in the absence of a future agreement.

⁷ *Intercoastal Pipe Line Inc. and Interprovincial Pipe Line Inc.*, GH-4-93, Decision dated April 1994, at pp. 55-56.

⁸ [1977] 3 W.W.R. 749 (B.C.C.A.) ("*Hillside Farms*").

Counsel for the Company submitted that the language in the Agreement is clear that consent is required. However, if the language in the Agreement is ambiguous, Amoco noted that one is entitled to go outside the bounds of the document. One could then look to the intention of the parties and all the factors surrounding the negotiations. Amoco has stated that it believes that the Agreement provides no rights to any additional use on the right of way without landowner's consent. It argued that if landowners were canvassed, it was sure they would convey the same message. Therefore, the agreement of both parties as to what was intended should put the matter to rest. Amoco also expressed concerns that having to renegotiate with the landowners could create difficulties, cause delay, and potentially breed mistrust. Further, section 86 could be used to determine the meaning of the contract. Finally, the *contra proferentum* rule requires that an agreement be construed against the author, and therefore the Right-of-Way Agreement would be construed in favour of the landowner.

No other party addressed this issue.

Views of the Board

There is a heavy burden placed on the Board by the Act to ensure that landowner rights are protected. While there may not be a requirement in the Act for the Board to approve the land acquisition agreements under section 86, in the Board's view it has an obligation to ensure that such agreements comply with the Act.

The Board is of the view that the rights set out in paragraph 86(2)(e) of the Act are not reflected in paragraph 5 of Amoco's Right-of-Way Agreement. It is not sufficient to state that the requirement for consent is implied because the Agreement provides that compensation must be agreed upon. The Act is clear that an agreement must provide that the use of the lands is restricted unless consent for proposed additional use is given at the time of that proposed additional use. Providing for the right to agree on appropriate compensation is not equivalent to providing for the right to withhold consent for construction of a new line.

The Act, in addition to requiring consent for additional future use in paragraph 86(2)(e), also contains provisions which provide for negotiation or arbitration if the landowner or company cannot agree on the amount of compensation payable (sections 88 to 103). It is clear that Parliament intended that consent and compensation be dealt with in a distinct manner. In the Board's view, the fundamental premise of Amoco's argument that compensation implies consent is flawed given that a company has the power to proceed with negotiation or arbitration on the matter of compensation. Those provisions do not contain a requirement for consent. For this reason, it is necessary that an agreement be clear that consent is required for any proposed additional use at the time of that additional use.

It is not sufficient to state that if the Agreement is not clear, recourse may be had to extrinsic evidence including the intent of the parties and the wording in the Act to interpret it. The Board has no evidence before it on the intent of the landowners with respect to this Agreement, nor should it need to rely on such evidence. The Agreement should meet the requirements of the Act. Section 86 of the Act was included in order to ensure that landowners would be aware of their rights. An

agreement that requires extrinsic evidence to interpret it cannot accomplish this objective.

The Board notes that in land acquisition agreements by other pipeline companies, wording has been included which clearly sets out the requirements of the provision in question. An example of this was filed with the Board by Westspur Pipe Line Company Inc.:

If Westspur proposes at any time in the future to construct an additional pipeline or pipelines in the right of way, then Westspur shall obtain the consent of the Owner prior to such construction for any and all such additional pipelines.⁹

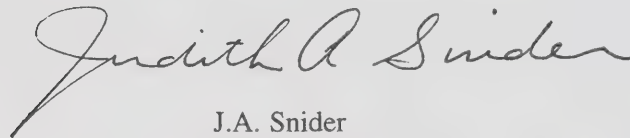
The Board is cognizant of the remarks of Amoco's counsel with respect to reopening negotiations with all landowners. However, even so, the Board is of the view that, in order to achieve compliance with the Act, the Agreement must specifically state that consent is required at the time of any additional use rather than stating only that compensation must be agreed upon at that time. Accordingly, the Board directs Amoco to amend the existing Right-of-Way Agreements and inform the Board when such amendments have been effected.

⁹ Interprovincial Pipe Line Inc. and Westspur Pipe Line Company Inc., OHW-2-95, Response to NEB Information Request No. 1, Item 21.3, Schedule 21.3(b).

Chapter 6

Disposition

The foregoing chapters constitute our Reasons for Decision in respect of the application considered by the Board in the OH-1-97 proceeding. The Board is satisfied from the evidence that the applied-for facilities are and will be required by the present and future public convenience and necessity. The Board is also of the view that the design and location of the applied-for facilities are satisfactory to ensure their safe and environmentally sound construction and operation. The Board will recommend to the Governor in Council that a Certificate be issued, subject to the conditions set out in Appendix I of these Reasons for Decision.



J.A. Snider
Presiding Member



R. Priddle
Member



R.D. Revel
Member

Appendix I

Proposed Certificate Conditions

1. Unless the Board otherwise directs, Amoco shall cause the approved facilities to be designed, manufactured, located, constructed and installed in accordance with those specifications, drawings and other information or data set forth in its application, or as otherwise adduced in evidence through the application process.
2. Unless the Board otherwise directs, Amoco shall implement or cause to be implemented all of the policies, practices, recommendations and procedures for the protection of the environment included in or referred to in its application, or as otherwise adduced in evidence through the application process.

Pre-Construction

3. Unless the Board otherwise directs, Amoco shall, at least 14 days prior to the commencement of construction of the approved facilities, file with the Board for approval:
 - (a) Amoco's field joining program; and
 - (b) Amoco's construction safety manual.
4. Unless the Board otherwise directs, Amoco shall, at least 14 days prior to the commencement of construction of the approved facilities, file with the Board a copy of the:
 - (a) Spring and Summer Rare Plant Surveys; and
 - (b) Wildlife Surveys.
5. Notwithstanding 4(b), a Snake Hibernacula Survey is not required for construction of the approved facilities with the exception of construction along the slopes of the South Saskatchewan River and directionally drilling the South Saskatchewan River.
6. Unless the Board otherwise directs, Amoco shall, at least 14 days prior to commencement of construction along the slopes of the South Saskatchewan River and directionally drilling the South Saskatchewan River, file with the Board a copy of the Snake Hibernacula Survey.
7. Unless the Board otherwise directs, Amoco shall, at least 14 days prior to commencement of construction of the approved facilities, demonstrate to the satisfaction of the Board that Amoco has obtained the consent and necessary approvals for all federally regulated railway crossings under Transport Canada responsibility.

During Construction

8. Unless the Board otherwise directs, Amoco shall directionally drill the South Saskatchewan River crossing.

9. Unless the Board otherwise directs, Amoco shall maintain an information file, in the construction office(s), of copies of permits or authorizations which contain environmental conditions.
10. Unless the Board otherwise directs, Amoco shall, at least 30 days prior to commencement of pressure testing the approved facilities, submit to the Board for approval its pressure testing manual.
11. Unless the Board otherwise directs, Amoco shall advise all landowners and other residents who may be living in the defined emergency planning zones of the proposed pipeline of the necessary actions to be taken in the event of a pipeline emergency. Amoco is further directed to inform the Board of the results of its communication program prior to placing the approved facilities in service.

Post-Construction

12. Unless the Board otherwise directs, Amoco shall, at least 30 days prior to placing the approved facilities in service, file with the Board an updated emergency response plan.
13. Unless the Board otherwise directs, Amoco shall, at least 14 days prior to placing the approved facilities in service, file with the Board an updated operation and maintenance manual.
14. Unless the Board otherwise directs, Amoco shall file with the Board a post-construction environmental report within six months of the date that each approved facility is placed in service. The post-construction environmental report shall set out the environmental issues that have arisen up to the date on which the report is filed and shall:
 - (a) where options have been provided for, provide a description of which practices, procedures and recommendations have been implemented during the construction process and the reasons for the choice of the options;
 - (b) indicate the issues resolved and those unresolved; and
 - (c) describe the measures Amoco proposes to take in respect of the unresolved issues.
15. Unless the Board otherwise directs, Amoco shall file with the Board on or before the 31 December that follows each of the first two complete growing seasons following the filing of the post-construction environmental report referred to in Condition 14:
 - (a) a list of the environmental issues indicated as unresolved in the report and any that have arisen since the report was filed; and
 - (b) a description of the measures Amoco proposes to take in respect of any unresolved environmental issues.
16. Unless the Board otherwise directs prior to 31 December 1998, this certificate shall expire on 31 December 1998 unless the construction and installation with respect to the applied-for facilities has commenced by that date.

